***THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

+ WRIT PETITION No.11429 of 1997

% Dated 13.03.2007

M/s Jindal Strips Ltd., (Ferro Alloys Division), Visakhapatnam, Formerly known as M/S Jindal Ferro Alloys Limited and earlier as M/s Ridhi Sidhi Ferro Alloys Limited, rep., by its General Manager Sri Seetaram Agarwal.

… Petitioner.

VERSUS

$ The Superintending Engineer, Operation Circle, A.P. State Electricity Board, Vizianagaram and others.

… Respondents.

! Counsel for Petitioner: Sri N.Jayasurya

^Counsel for Respondents: Sri K.N.Jwala

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? Cases referred

AIR 1997 AP 342

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

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Between:

M/s Jindal Strips Ltd., (Ferro Alloys Division), Visakhapatnam, Formerly known as M/S Jindal Ferro Alloys Limited and earlier as M/s Ridhi Sidhi Ferro Alloys Limited, rep., by its General Manager Sri Seetaram Agarwal.

... **PETITIONER**

And:

The Superintending Engineer, Operation Circle, A.P. State Electricity Board, Vizianagaram and others.

....**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.11429 of 1997

ORDER:

This writ petition is filed seeking to quash the notice dated 07.05.1997 issued by the first respondent, demanding the petitioner to pay an amount of Rs.53,26,767.75 ps towards the additional charges and interest on withholding amount of categorization difference.

Petitioner is a small scale industry, established in the year 1986 in the notified area of Vizianagaram District. After its establishment, the petitioner entered into an agreement with the then A.P. State Electricity Board (Board), and the Board agreed to supply high-tension power under Category-I to the petitioner unit. Originally the Board agreed to

supply power at H.T.Category-I and thereafter, in the month of September, 1987, the said category was changed to H.T.Category-III and thus the Board started collecting tariff from the petitioner under H.T.Category-III. For the months of September, October, and November 1987, the petitioner paid an amount of Rs.6,96,208.58 ps., Rs.5,67,261.28 ps, and Rs.8,950.88 ps., respectively, under H.T.Category-III tariff. Questioning the same the petitioner filed W.P.No.18515 of 1987, and the said writ petition was admitted on 08.12.1987 and an interim direction was given to the respondents to collect the tariff from the petitioners under H.T.Category-I, giving benefit of 25 per cent rebate.

Subsequently, petitioner filed another writ petition, being W.P.No.19552 of 1987, seeking further extension of the said rebate of 25% in all electricity bills. For the months of August, 1988, June 1989, April 1990 and June 1990, the petitioner made excess payments of Rs.3,68,659.92 ps, Rs.61,413.34 ps, Rs.18,190.33 ps and Rs.96,997.44 ps., respectively. Subsequently W.P.No.19552 of 1987 was allowed in toto on 19.06.1996 directing the respondents to extend the rebate at 25 per cent upto the year 1992, whereas, W.P.No.18515 of 1987 was partly allowed on 24.06.1996 directing the respondents to bill the petitioner under H.T.Category-III only with effect from 30.03.1988. Pursuant to the said judgments, the Superintending Engineer raised a demand dated 07.11.1996 directing the petitioner to pay an amount of Rs.17,90,081.67ps, being the amount withheld by it towards categorization and 25 per cent rebate. It is also stated in the said notice that if the said amount is not paid within a period of seven days from the date of receipt of the said notice, the power supply would be

disconnected. Thereafter, the petitioner made a representation to the Board requesting to permit it to pay the said amount by way of instalments and the Board permitted the petitioner to pay the said amount in six equal instaments with additional charges and interest.

Further, on 07.05.1997, the first respondent addressed a letter to the petitioner stating that after revision of bills for the months of January and February 1997, it was found that an amount of Rs.21,32,949/- was paid in excess by the petitioner and out of the said amount, Rs.4,53,439/- was adjusted against the bill for March 1997 and the remaining amount of Rs.16,79,510/- was adjusted towards categorization and additional charges. On the same day, the first respondent also addressed another letter to the petitioner stating that the additional charges on account of withholding of categorization amounts was calculated at
Rs.68,37,130.34 ps and interest of Rs.1,69,147.41 has to be paid for affording instalment facility. It is further stated that after adjusting the excess amount paid by the petitioner i.e, Rs.16,79,510/-, towards categorization and additional charges, petitioner has to pay an amount of Rs.53,26,767.75 ps. As no details were furnishing in the said letters, petitioner addressed a letter dated 19.05.1997 to the first respondent to furnish a calculation sheet, whereupon, the first respondent furnished a calculation sheet, under which, the petitioner was required to pay an amount of Rs.53,26,767.75 ps, within the date specified therein. Again, on 24.05.1997 the first respondent issued a notice to the petitioner demanding it to pay the said amount within seven days from the date of receipt of the notice, failing which, the service connection would be disconnected. Consequent to that the petitioner addressed a letter dated 30.05.1997 to the first respondent

pointing out the mistakes committed in computing the said amount and also stated that it is entitled to interest on the excess amounts paid by it on various dates from the date of its payment. Subsequently on 02.06.1997, the petitioner addressed a letter to the third respondent clearly stating that though it paid excess amounts during 1987, 1988 and 1990, the said amount was adjusted only at the time of issuing the demand notice dated 07.05.1997, and as such it is entitled to interest from the date on which the excess payment was made. Along with the said letter, the petitioner also enclosed a statement clearly mentioning the amounts paid by it and the interest, which it is entitled. As there was threat of disconnection, the petitioner filed this writ petition challenging the impugned demand notice dated 07.05.1997.

The first respondent filed a detailed counter stating that as per the contract entered into between the Board and the petitioner, the petitioner agreed to pay the charges as per the terms and conditions of supply prescribed by the Board from time to time. However, the Board allowed 25 per cent rebate and charged under Category-I as per the interim orders passed by this Court in W.P.Nos.18515 of 1987 and 19552 of 1987. Subsequently, the bills were revised under category III with effect from 30.03.1988 and the Board allowed 25 per cent amount and the petitioner also paid the amount demanded by the Board in instalments. Subsequently, after disposal of the said writ petitions, an amount of Rs.68,37,130.40 ps has been calculated towards additional charges on account of withholding categorization amounts and interest charges of Rs.1,69,147.41 for affording instalment facility as per clauses 32.3.1 and 34 of the terms and conditions of supply in force. Accordingly a notice was issued to the petitioner on 07.05.1997 demanding to pay an amount of Rs.53,26,767.75 ps, after deducting

an amount of Rs.16,79,510/-, being the excess amount paid by the petitioner from the amount of Rs.68,37.130.40 ps. Out of the said amount, interest was calculated from December 1987 to October, 1990 and additional charges was calculated from December, 1987 to December 1990. It is further stated that as per the instalment sanction order dated 19.11.1996, the Board is entitled to additional charges and interest. Hence, it is concluded that the impugned notice is valid.

The respondent-Board does not dispute about the excess payments made by the petitioner unit and the adjustment of the said amounts against categorization additional charge. The respondent-Board also does not dispute that the petitioner originally had to pay the amounts, but either by virtue of the stay orders granted by this Court or by virtue of the allowance granted by the Board permitting the petitioner to pay the said amount by way of instalments, the said amounts are not paid in time, for which the Board is definitely entitled to additional charges and interest as provided in clauses 32.2.1 and 34 of the terms and conditions of supply. Now the only point that falls for consideration is as to whether the petitioner is entitled to interest for the excess amount paid by it?

Having heard both the counsel at length, this Court is of the view that the contention put forth by the learned counsel for the petitioner that the petitioner is also entitled to interest on the excess amount paid by it, deserves consideration. When the Board is collecting interest or additional charges for delayed payments, it is not known as to why it cannot be said that the same analogy applies and the Board has also to pay the interest insofar as the excess amounts paid by the petitioner. As stated supra, there is no dispute about the payments made by the petitioner and thus there is an excess of

Rs.18,00,000/- as on May 1997 and the said amount was adjusted from May 1997 and thus the same is lying with the Board. In case of this nature, when any excess amount is paid, the Board is under obligation to return the said amount and if it is not possible, it shall adjust the same towards future payments. However, the Board did not do so, and thus the said amount piled up to Rs.18,00,000/-. The Board started adjusting the said amount only when the notice demanding additional payment and interested was issued. When once it is admitted by the Board that the said amounts are lying with the Board from the dates of payment, when they were not adjusted from the date of their respective payments, and when the Board is claiming interest/additional charges for the outstanding amounts, definitely the Board is liable to pay interest on the excess amount paid by the petitioner.

Of course, the learned Standing Counsel appearing for the Board contended that even if the petitioner is entitled to interest, it shall not be on par with the Board, as the Board stands on a different footing. This Court is unable to appreciate the said contention. There cannot be different yardsticks in computation of the interest when the Board has fixed up its own rates of interest and mentioned in the terms and conditions of the supply. Therefore, it cannot turn round and say that the petitioner is entitled to customary interest at 6 per cent per annum, but not on par with the Board ie, at 24 per cent per annum.

Further, in this context it may be relevant to refer to a judgment of this Court in M/s Suryamukhi Enterprises, Hyderabad v A.P.S.E.B., Hyderabad[1], wherein this Court has fixed the interest at the rate of 18 per cent for the excess amount paid by the petitioner and lying with the

Board. Though the facts in the said case are different, the principle laid down in the said judgment insofar as payment of interest by the Board applies to this case.

Accordingly, this writ petition is allowed and the impugned demand notice dated 07.05.1997 is hereby set aside. Consequently, the respondents are hereby directed to workout the interest at the rate of 18 per cent per annum on the excess payments made by the petitioner from the date of its payment, add the same to the principal amount and deduct it from out of the outstanding amount, and thereafter issue a fresh demand notice directing the petitioner to pay the amount payable by the petitioner. On receipt of such demand notice, the petitioner shall pay the amounts that would be specified, within a period of eight weeks from the date of receipt of a copy of the said notice. There shall be no order as to costs.

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13.03.2007

Note: L.R. Copy to be marked

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[1] AIR 1997 AP 342